

PRIVATE LANDS/PUBLIC WILDLIFE COUNCIL
COLLABORATIVE SOLUTIONS FOR
PROBLEMATIC WILDLIFE CONCENTRATIONS

Discussion Draft:

Problematic Wildlife Concentration (PWC) poses both challenges and opportunities. The Private Lands/Public Wildlife Council – comprised of landowners, outfitters and sportsmen – has devoted many hours in discussion of the issue, and has developed a solutions-oriented proposal for discussion. In the Council’s unanimous opinion, this community-based, facilitated PWC Solutions proposal will enhance the prospects of positive solutions for all concerned.

Background:

At the present time, PWC involves significant risks to landowners and neighbors, the health of domestic and wild herds, our Montana hunting heritage and legally-mandated game management objectives. In dealing with this issue, the FWP Commission presently has legal authority to modify license/permit/season structures, including either-sex, bull/buck/cow/doe tags, etc. Additionally, there is potential for lawsuits or “one-sided” legislation, neither of which the Council thinks offers the best solution. The PL/PW’s proposal is based on these principles:

No new legal authority for FWP or the FWP Commission is created by this proposal;

This process will not force public access on private property;

Important private and public interests are involved, and collaborative, community-based solutions should be given priority;

Responsible representatives of key interests—agriculture, landowner, outfitter, sportsmen - must be at the table, and that any directed solutions should have understanding and support of all interests;

The PWC Solutions resources are available to anyone suffering severe adverse impacts, including a landowner with PWC on his/her own property.

The proposal includes a 4 year “sunset”; the process would terminate unless renewed with support of the key interests.

Definition:

For the purposes of this proposal, “Problematic Wildlife Concentration” (PWC) is defined as *the intentional or unintentional concentration of big game animals where game management by hunting has not been able to be effectively utilized, resulting in negative impacts to neighboring areas/or and landowners, failure to achieve legally-mandated Fish, Wildlife and Parks management objectives, and/or risk to domestic and wild herd health.*

Summary:

There is no existing FWP Department or commission authority to force public hunting access on private land, and this proposal does not create any new authority. Therefore, the proposed PWC solutions process cannot be used to force public hunting access on private lands.

The proposals for solutions are based on the ethical and legal principle that landowners have the right to manage their property as they see fit, so long as that management does not cause preventable, significant harm to their neighbors or to important community health and safety interests.

The proposal is aimed at dealing exclusively with situations where significant negative impacts are taking place. When this occurs, there needs to be a predictable and fair-to-all-parties process, structured to achieve a solutions-oriented, community-based discussion to resolve the issue. Given the importance of “getting it right,” it is proposed that the following process be implemented with a 4-year sunset clause.

It is important to realize that a landowner may believe he/she has PWC on his/her own property. Under this proposal, the landowner would first talk directly to the local FWP Biologist to see if a solution can be identified. If a solution is not agreed upon, or if further action is desired, the landowner can submit a PWC application, as discussed below. The application can include a request for an invitation to neighboring landowners to attend a local PWC solutions committee meeting in order to work on a collaborative solution to the PWC in the area.

Facilitated Discussion and Solutions

FWP will establish a formalized program – tentatively called **PWC Solutions** -- to provide professional facilitation and financial resources to assist resolution of PWC situations on a site-specific basis. To obtain these services, an affected party will file a written and signed application to a newly established State PWC Solutions Committee. (See description of Committee composition, below.) The application will state the particulars of the PWC issue, including specific, documented negative impacts, the efforts that have been made to resolve them, and the reasons that a **PWC Solutions** process is proposed. **Lack of hunting opportunity is not a valid or sufficient basis for filing an application.** FWP will provide its assessment of the merit of the application, and the implicated party or parties will be notified of the application and invited to provide comment. The state committee may seek any additional information it deems necessary to make an informed judgment.

A \$350.00 application fee shall be required, said fee to offset costs of implementing the PWC Solutions process.

The Committee will consider the application. A vote of 6 members shall be required to determine that the application has merit. In that case, FWP will make available **PWC Solutions** resources to address the issue.

Note: Specific criteria to determine whether or not a specific PWC application merits approval will need to be established for utilization by the State PWC Committee.

Facilitated Discussion Process:

Phase One:

The initial facilitated effort should be personal, “one on one”, involving the parties most directly affected. If FWP or another state agency staff has initiated the application, a neutral, third-part facilitator/mediator selected by the State PWC Committee shall be utilized.

Phase Two:

- a. If mutually-agreeable solutions are not achieved by Phase One, a community-based dialogue of all affected people/interests will be initiated. A **Local PWC Solutions Committee** will be established, comprised of the applicant and implicated party or parties, FWP staff, and, (as determined by the facilitator,) hunters, outfitters, landowners, additional experts, and other affected interests. The committee will use a team approach, working to achieve collaborative, consensus-based solutions enjoying broad community support, and to monitor compliance/effectiveness.
- b. Agreements will be written, and include clear steps for monitoring compliance as well as the agreement’s effectiveness in achieving the agreed-upon goals.
- c. The consensus agreement and monitoring plan will be presented for review by the State **PWC Solutions Committee**.
- d. If the consensus agreement does not require action by the Fish, Wildlife and Parks Commission, the State PWC Solutions Committee may approve it by majority vote, and notify the FWP Commission of the action taken. If the agreement does require FWP Commission action, the State PWC Committee will, by majority vote, forward its comments and recommendation to the Commission for its consideration.
- e. **PWC Solutions** plans approved by the Committee/FWP Commission will receive FWP resources needed to monitor the plan’s implementation. Concise annual reports on the plan will be prepared with **PWC Solutions** resources (using neutral, third party resources where appropriate) for Committee/Commission review. If annual reports indicate a need to modify the agreement, the same community-based, consensus process shall be used to address the issues.

Phase Three: Proposed Committee Solutions

If the Phase One and Two processes fail to develop an agreement, either because the party or parties with PWC declines to participate, or because consensus on solutions was not achieved, the applicant may petition the State **PWC Solutions Committee** to hold a hearing to consider potential solutions is warranted. The person/agency submitting the petition shall suggest a proposed solution. Six votes will be needed to move forward with a hearing.

At such a hearing, the State Committee will receive written and verbal evidence from all interested parties.

In order to approve a proposed solution to resolve a specific PWC problem, the State Committee must have seven (7) affirmative votes, and must have determined that the following three criteria have been met:

- a) that significant negative consequences and/or risks arise from the PWC situation;
- b) that the applicant's proposed solution or one developed by the State Committee, has a strong potential to alleviate the problem; and
- c) that the party or parties on whose land the PWC exists has/have either declined to participate in good faith in the Phase One/Two processes, or has/have otherwise declined to take reasonable steps to alleviate the problem.

An affirmative vote will be referred to the FWP Commission for its consideration for implementation.

State PWC Solutions Committee—Diverse Composition:

It is essential that the composition of the Committee reflect the diverse community interests impacted by PWC. To that end, the Council recommends that it be comprised of nine members as follows:

One member of the Board of Livestock -- Governor's appointment
One member of the FWP Commission -- Governor's appointment
Two members representing production agriculture *
Two members representing the outfitter industry *
Two members representing recreational sportsmen *
One major landowner not actively engaged in production agriculture or member at large**

*One appointment each by the Majority and Minority Leaders of the Senate

**Appointed by the Private Land/Public Wildlife Council

The Governor will appoint the chairperson from among these members.

Proposed Working Group: Assessment of Existing Remedial Tools, Their Use, and Potential New Tools

Under present authority, the FWP Commission may modify license/permit/season structures, including either-sex, bull/buck/cow/doe tags, etc. The Council proposes that a working group of

diverse interests, co-chaired by two members of the PLPW, be assembled to consider the existing remedial tools, their use and effectiveness, and potential new tools.

Again, the PL/PW Council offers these proposals as a constructive alternative to the present situation, and looks forward to hearing thoughts from all interested parties.